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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,215	08/28/2000	Allan Lamkin	68570	7416

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[REDACTED] EXAMINER

VU, TUAN A

ART UNIT	PAPER NUMBER
2124	9

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/649,215	LAMKIN ET AL.
	Examiner Tuan A Vu	Art Unit 2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 August 2000 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7,8</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

1. This action is responsive to the Applicant's response filed July 7, 2003.

Papers filed 7/7/03 and 7/21/03 are also considered. Claims 1-10 are pending in the office action.

### *Information Disclosure Statement*

2. The IDS filed on the above date provides electronic listing of patent documents but no copies of those listed patents have been submitted, which amounts to a considerable burden on the part of the Examiner to fetch them separately. Examiner is aware that for U.S. patents listing, it is not required that Applicant provide the hard copies. Initially, Examiner would suggest Applicant to sort the above list so only the most relevant references are provided. But to expedite the prosecution, Examiner has considered the IDS. Any previous suggestion/request directed to Applicant (via telephonic communication on 8/15/03) in regard to the latter's providing hard copies of the listed patents should now be cleared.

3. Further, the IDS submitted 7/15/2003 lists 4 references but copies of 3 out of 4 listed items are not provided, hence only the one provided copy is considered. Besides, the missing references had been checked as having been considered by Examiner from an earlier action.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagavath et al., USPN: 6,505,169 (hereinafter Bhagavath), in view of Kroening et al., USPN: 6,080,207 (hereinafter Kroening).

**As per claim 1,** Bhagavath discloses a method combining video/audio content with programming content comprising:

generating authoring output comprising a definition for a variable (e.g. *metadata* – col. 2, lines 2-6, 30-37; *URLs, constraints, time, date* - col. 6, lines 24-33), and further comprising a representation of the video/audio content (e.g. *streaming media content, play back* – col. 1, lines 21-25; col. 1, line 65 to col. 2, line 2; *ads* -col. 2, lines 20-29 );

selecting a source file, the source file comprising the variable (e.g. <URL> ...</URL>, Figs. 9A, 10; step 609 – Fig. 6 -- Note: locating/selecting the URL source data or ads is equivalent to selecting the file comprising that URL link);

searching the source file for the variable (e.g. *tags, URL, locating the stream* - col. 6, lines 36-48; Fig. 6), and replacing the variable with the definition for the variable (e.g. col. 2, lines 30-37; col. 4, lines 60-65; Fig. 6 – Note: derive from hyperlink content with actual URL source data to retrieve is equivalent to replacing variable with its definition );

generating programmatic content in response to the searching (e.g. step 509 – Fig. 5; *ads insertion, program structure, profile* - col. 2, lines 20-31; *insertion instructions*(step 607), step 611- Fig. 6 ).

But Bhagavath fails to specify generating an image as a function of the programmatic content and the representation of the audio/video content. Bhagavath, nonetheless, discloses a content metadata file and ad metadata to provide profile information, content structure,

instructions responsive to the requirements for forming of audio/video stream (file (e.g. *responsive to ... stream structure* - col. 3, lines 43-48; col. 4, lines 30-59; col. 5, lines 10-27).

The providing of metadata/information and configuration instructions to help activate, configure and describe a electronic contents delivered via a media to a target machine as suggested by Bhagavath is further evidenced by Kroening. Indeed, Kroening, in a method to generate custom software configuration to a target storage device using baseline for software assembling, such baseline analogous to the use of metadata to retrieve ads in Bhagavath's method, discloses generating, by a program readable code, of an image in response to the desired configuration of the target operating system (e.g. *image builder* – col. 2, lines 20-64; link 28, device 30 – Fig. 1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to implement creating of an image of the components to assemble in the target device as taught by Kroening in response to the programmatic content for audio/video components (e.g. ads) assembling process by Bhagavath in conjunction with metadata files for transmitting (Fig. 6) audio/video content to target machines. One of ordinary skill would be motivated to do so because this would alleviate recreating of a whole sets of baseline for subsequent constructions of stream data per download request as mentioned by Bhagavath; and, as suggested by Kroening, would further enhance resources usage efficiency and add flexibility for upgrade, installation, and re-adjustment of the data contents should such needs arise (e.g. col. 3, lines 1-17)

**As per claim 2,** Bhagavath further discloses storing ads data stream content in a storage medium (e.g. Ad cache – Fig. 3) but does not teach storing of the image in a storage medium. But this limitation on creating of the image and its storage has been disclosed by Kroening in

claim 1 above; hence would have also been obvious for the same rationale as set forth in claim 1 above.

**As per claim 3,** Bhagavath discloses transmission of audio/video and programming content through a transmission medium (e.g. link 109 – Fig. 1); but does not teach transmission of image thereof. But this limitation on the image and its downloading, storage at the target device has been disclosed by Kroening in claim 1 above; hence would have also been obvious for the same rationale as set forth in claim 1 above.

**As per claim 4,** Bhagavath discloses searching of source file at build time (e.g. step 507 - Fig. 5; *non-real-time* - col. 3, lines 42-45; col. 5, lines 41-49).

**As per claim 5,** Bhagavath further discloses searching of source file at run-time (*substantially real-time* – col. 3, lines 32-40, 45-48; col. 5, lines 20-27, 52-59).

**As per claim 6,** Bhagavath further discloses searching in response to a software engine executed on a HTTP proxy (Figs. 3, 6; col. 3, lines 21-49; col. 5, lines 35-39); but fails to specify the use of a browser executing such search engine. However, Bhagavath tags, hyperlinks, and markup language in the metadata for effecting the assembling of source data and programming content (e.g. Figs 9a-b, 10). One skill in the art at the time of the invention would recognize the use of browser software to interpret the tags and markup language as disclosed. Hence, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide browser software applications, or interpretation engine to interpret the markup language as taught by Bhagavath; and thereby effect the retrieval of data included in hyperlinks such as disclosed above during the proxy ads retrieval as taught by Bhagavath because HTTP documents are known to be interpreted best by readily available and popular browsing engine at the time the

invention was made and using browsers to perform such data retrieval would be more cost-efficient and user-friendly.

**As per claim 8,** Bhagavath discloses a system for combining video/audio content with programming content comprising:

means for searching a source file for a variable (e.g. *tags, URL, locating the stream* - col. 6, lines 36-48; Fig. 6), and for replacing the variable with a definition for the variable (col. 2, lines 30-37; col. 4, lines 60-65; Fig. 6 – Note: derive from hyperlink content with actual URL source data to retrieve is equivalent to replacing variable with its definition);

means for generating programmatic content in response to the searching (e.g. step 509 – Fig. 5; *ads insertion, program structure, profile* - col. 2, lines 20-31; *insertion instructions*(step 607), step 611- Fig. 6 ).

But Bhagavath fails to specify means for generating an image as a function of the programmatic content and the representation of the audio/video content. But this limitation has been addressed by the combined teachings of Bhagavath and Kroening as in claim 1 above, hence is rejected herein with the same ground of rejection set forth therein.

**As per claim 9,** Bhagavath discloses a system for combining video/audio content with programming content comprising:

a parser adapted to search a source file for a variable (e.g. *tags, URL, locating the stream* - col. 6, lines 36-48; step 607 - Fig. 6; col. 4, line 62 to col. 5, line 13 – Note: examining a file with tags to derive hyperlink content is equivalent to a parsing means);

replace the variable with a definition for the variable (col. 2, lines 30-37; col. 4, lines 60-65; Fig. 6 – Note: derive from hyperlink content with actual URL source data to retrieve is equivalent to replacing variable with its definition); and

generate programmatic content in response to the searching (e.g. step 509 – Fig. 5; *ads insertion, program structure, profile* - col. 2, lines 20-31; *insertion instructions*(step 607), step 611- Fig. 6 ).

But Bhagavath fails to specify generating an image as a function of the programmatic content and the representation of the audio/video content. But this limitation has been addressed by the combined teachings of Bhagavath and Kroening as in claim 1 above, hence is rejected herein with the same ground of rejection set forth therein.

**As per claim 10,** this system claim recites modules for generating the same step limitations, i.e. for searching, for generating programmatic content, and for creating image as recited and addressed in claim 8 above; hence is rejected herein using the corresponding rejections set forth therein, using accordingly Bhagavath's teaching in view of Kroening's.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagavath et al., USPN: 6,505,169 and Kroening et al., USPN: 6,080,207, as applied to claim 5 above, and further in view of Cook, USPN: 5,860,068 (hereinafter Cook).

**As per claim 7,** Bhagavath in combination with Kroening discloses insertion and retrieval (i.e. searching) of software content, e.g. audio/video components, for medium storage (i.e. hardware device) of but fails to disclose that such searching step includes searching in response to the insertion of a DVD into a hardware device. Cook, in a method to manufacture and distribute customized digital data product to users over the Internet, using an image to

assemble component sets analogous to the storing and transmitting of audio/video content as taught by Bhagavath (in combination with Kroening's teachings), discloses assembling of digital component to store in a digital video disk (DVD) medium (e.g. *image* - col. 2, line 59 to col. 3, line 10; col. 4, lines 8-32; *data collection system* 33 - Fig. 2). It would have been obvious for one of ordinary skill in the art at the time the invention was made to implement assembling of audio/video components dynamically in response to an user's request as taught by Bhagavath ( re claim 5), such assembling further improved by the including of an image of data and programmatic content in the storage medium for downloading, as suggested by Kroening, so that the data thus assembled is to build a digital media storing DVD components as taught by Cook. One of ordinary skill would be motivated to do so because the building and distribution of video/audio data via the Internet in response to user's request such as taught by Bhagavath ( in combination with Kroening's teachings) is but very analogous, hence no extra effort exerted, to assembling DVD components for distribution to the users as suggested by Cook (e.g. col. 1, lines 7-30; col. 2, lines 13-46 ); and is a highly sought-after feature in today's digital media vending and distributing business, e.g. DVD media, while handily taking advantage of Internet distributing means, and available network amenities, e.g. browsers, to achieve video/digital well-demanded media transactions.

***Response to Arguments***

7. Applicant's arguments filed 7/7/2003 have been fully considered but they are not persuasive. The following are the reasons therefor.

**Claims 1-6, 8-10 with rejections under 35 USC 103(a) using Bhagavath and**

**Kroening:**

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(A) As per claims 1, and 8-10, Applicants have asserted that the “representation of video/audio content” has been equated with streaming media content and ads content by Bhagavath ( Applicant’s Remarks, p. 5, 2<sup>nd</sup> para.). Examiner would like to point out that the representation of video/audio as recited does not explicitly call for it being a definition of how the video/audio content is displayed. As interpreted by Examiner, forms of representing audio/video contents are like media content being streamed and displayed by the browser pages ( see Rejection) or advertisement contents being exhibited on web pages. Indeed, the contents of those audio/video signals, i.e. media content or ads, are electronic signals, whereas how they are represented to the viewer or listener are representations and such representations can be XML files describing the metadata aspect of the content, their graphical/video display on the web pages, or sound off the speakers when the content are translated into sound waves; even HTML text conversion or visual diagrams, e.g. spreadsheets, or hardware or symbolic structures effecting or depicting their media storage. The representation of audio/video content such as interpreted by the Examiner are displays of media content or ads streamed to and received by the target machine applications such as the browser; and such limitation is disclosed by Bhagavath as set forth in the rejection.

(B) As per arguments by Applicants on Bhagavath’s not teaching “generation of a representation of the video/audio content” (Applicant’s Remarks, p. 5, 3<sup>rd</sup> para), Examiner would like to point out that the claims recites “generating authoring output...”, “generating programmatic content ...”, and “generating an image as a function of the programmatic content and the representation of the audio/content”; and there is no direct reciting of “generation of a representation of the video/audio content” as asserted by Applicants. Besides, as has been shown

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in section (A), Bhagavath's display of ads/media content is interpreted as providing a representation of the video/audio content.

**Claim 7 with rejection under 35 USC 103(a) using Bhagavath, Kroening, and Cook:**

(C ) As per assertion on claim 1 not disclosing "representation of video/audio content" (Applicant's Remarks, p. 6, last para), the argument has been addressed in section (A) above.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (703)305-7207. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703)305-9662.

**Any response to this action should be mailed to:**

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

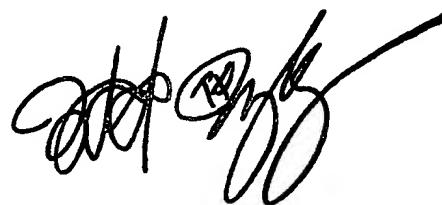
(703) 746-7239, ( for formal communications intended for entry)

**or:** (703) 746-7240 ( for informal or draft communications, please label  
“PROPOSED” or “DRAFT”)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA, 22202. 4<sup>th</sup> Floor( Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is (703) 305-3900.

VAT  
August 15, 2003



**Todd Ingberg  
Primary Examiner  
Group 2100**